IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SEVENTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 17514 of 2004

Between:

K. Venkateshwarlu, S/o. Late Narsaiah,
R/o. 8-81, Madikonda, Hanamkonda, Mandal, Warangal District.

..... PETITIONER

AND

1 Divisional Engineer (Administration), O/o. General Manager,
B.S.N.L., Warangal.
2 General Manager, Telecom District,
B.S.N.L., Warangal.
3 Chief General Manager, B.S.N.L. Sanchar Bhavan,
Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction more particularly one in the nature of Writ of Mandamus to declare that the action of the respondents in not treating the petitioner as regular Mazdoor is highly arbitrary bad and illegal and also declare that the letter dt. 4-2-2003 issued by the first respondent is highly arbitrary bad and illegal and consequently direct the respondents to take him into service as regular Mazdoor

Counsel for the Petitioner: MR.P.PRABHAKAR REDDY

Counsel for the Respondents: MR.B.DEVANAND, S.C. for B.S.N.L.

The Court made the following :

ORAL ORDER:

The petitioner has filed this writ petition seeking a Mandamus to declare the action of the respondents in not treating him as regular Mazdoor in the respondent-organisation and also the letter dated 4.2.2003 issued by the 1st respondent as illegal and arbitrary.

The case of the petitioner is that he was initially appointed as Casual Labour on 1.11.1993 and Temporary Status Mazdoor was conferred on him on 1.10.1988. Since then, he has been working in the department without any break. Though he is eligible for regularisation as Mazdoor with effect from 1.4.1994, his services were not regularised on the ground that he did not apply for regularisation. As he was suffering from serious illness, he underwent treatment in M.G.M. Hospital from 1.9.1999 to 1.11.2001, and therefore, he did not report for duty from 1.8.1999 to 19.12.2001. After his illness, he submitted an application on 2.11.2001 to the respondents requesting to assign him work, but they refused to take him into service. He submitted another application on 31.7.2002 giving reasons for not attending the duties from 1.9.1999 onwards, but the 1st respondent issued the impugned proceedings stating that his request for reinstatement cannot be accepted as per the proceedings dated 21.10.1992. According to the petitioner, he has been working as

Casual Labour for 5 years and as Temporary Status Mazdoor for 11 years and therefore, the proceedings dated 21.10.1992 have no application to his case. He approached the Central Administrative Tribunal, Hyderabad by filling O.A.No.1228 of 2003, but the same was dismissed giving liberty to the petitioner to approach the appropriate forum. Hence, this writ petition has been filed.

The respondents filed counter affidavit admitting that the petitioner was engaged as a Casual Mazdoor on 1.11.1983 and Temporary Status was conferred on him on 1.10.1989, but the contention of the petitioner that he is working as a Temporary Status Mazdoor from 1.11.1983 is not correct. The petitioner was absent from duty for a period of two years. The contention of the petitioner that he took treatment for a period of two years cannot be believed because the same was not intimated to the office at any point of time. The medical certificate does not indicate that he took treatment for a period of two years. The petitioner could not produce any discharge summary, which is normally given to an inpatient at the time of discharge. The petitioner appears to be under the wrong impression that regularisation of services of Casual Mazdoor/Temporary Status Mazdoor is an automatic and it should be done even without there being any applications from the eligible candidates. It is submitted that the main purpose of calling for application is to obtain the date of birth certificate, caste certificate and relevant documents. In this process, the competent authority used to issue circulars directing all the unit officers to obtain applications from the eligible candidates. Accordingly, the Telecom District Engineer, Warangal issued Circular, dated 8.1.1993 directing all the unit officers to obtain applications in the prescribed proforma from the eligible Casual Mazdoors with Temporary Status who were engaged in the Department as Casual Mazdoors during the period from 1.4.1983 to 31.3.1984. Such circulars should be issued as and when vacancies arise. The petitioner did not utilize the opportunity given to him. The contention of the petitioner that he was not informed about his entitlement for regularization and therefore, he could not apply is not true. In

Warangal, number of candidates applied and their services were regularised as per their eligibility. It is stated that conferment of Temporary Status on a Casual Mazdoor is an intermediate stage in the process of regularizing his services as regular Mazdoor. A Temporary Status Mazdoor is paid wages on pro-rata basis for the number of days he actually worked and the said procedure is being followed in the case of Casual Mazdoors also. The conditions applicable to Casual Mazdoors are equally applicable to the Temporary Status Mazdoors also. No authority of B.S.N.L is vested with the power to condone the unauthorised absence for a period of two years, and therefore, regularising the services of the petitioner does not arise.

Heard the learned counsel for the petitioner and the learned standing counsel for the respondents and perused the material on record.

The learned counsel for the petitioner has contended that because of serious ill-health, the petitioner was admitted to the hospital and thereafter, he produced a medical certificate to that effect and the circular under which the petitioner's case was rejected does not apply to the Temporary Status conferred on the Casual Mazdoors, but it applies only to the Casual Mazdoors and hence, the rejection of the petitioner's case is unsustainable.

On the other hand, the learned standing counsel for the respondents has contended that the petitioner was an unauthorised absentee from duty for a period of two years. He has not even produced the discharge summary issued by the competent authority showing that the respondents have no authority to condone the delay of more than one year. Moreover, when the applications were called for, the petitioner did not avail himself of applying for regularisation, and therefore, the petitioner is not entitled to regularisation.

Certain guidelines were issued by the Chief General Manager, Telecommunications, Hyderabad in TA/STA/9-2/Rlgs./Corr./III, dated 6.1.1990 with regard to the condonation of breaks in service in respect of Casual Mazdoors. Those instructions were modified by the

proceedings of the General Manager, dated 10.4.1990 based on the references received from the Divisional Engineers and requests from the Staff side, wherein, it is decided that:

a. *If the break is due to health reasons/accidents, the Divisional Engineer concerned may condone the period of break if it is not more than 6 months, provided the casual Mazdoor had produced the Medical Certificate at the time of the illness or accident, but not now with back dates. Medical certificates received now with back dates for condonation should not be entertained.*

b. *If the break is due to Department's inability to engage the casual Mazdoors for want of work, the Divisional Engineers concerned may condone the break period upto one year; provided they were engaged to work subsequently when the work is available. The condonation upto one year may be done only after thorough study of the case with records indicating the non-availability of work, after complete satisfaction of the Divisional Engineer. During such break period, no junior to the applicant should have been worked in the Division.*

In view of the foregoing, it is not necessary to refer the cases to Circle Office for condonation of break upto one year. If the break period is more than one year, the cases should not be entertained and may be rejected outrightly."

While precisely invoking the same proceedings, the request of the petitioner for re-engagement cannot be accepted. Admittedly, in this case, the petitioner was absent for more than two years without any intimation. He did not produce the medical certificate at the time of illness or ill-health. After a lapse of two years, he produced medical certificate with back date. The same is not permissible in view of the circular instructions. Even the medical certificate does not indicate whether the petitioner was given treatment either as an out-patient or as an in-patient. Admittedly, the petitioner did not give any intimation

to the department through his relatives about his serious ill-health. The petitioner ought to have produced the discharge summary given to the inpatient if really he took treatment in hospital.

It is the specific case of the respondents that regularising the services of a Casual Mazdoor is not a matter of course, but depending upon the vacancies only, applications from the eligible candidates would be called and such candidates would apply for the same. In pursuance of the circular issued by the Telecom District Engineer, Warangal, dated 8.1.1993, all the unit officers have to obtain the applications in the prescribed proforma from the eligible Casual Mazdoors for Temporary Status. In pursuance of the inviting of applications, the petitioner did not avail the opportunity of applying for his regularisation. According to the respondents, number of other candidates working in the Warangal applied for the same and their services were regularised as per their eligibility. With regard to the conferment of Temporary Casual Mazdoors as regular employees, the competent authority should call for applications from time to time depending upon the number of vacancies. Therefore, it is the duty of the writ petitioner to submit an application for his regularisation, but in fact, he did not submit any application in the year 2003. The complaint of the writ petitioner is that he was not aware of this procedure, but his request cannot be accepted at this belated stage.

With regard to the non-application of the proceedings Lr.No.269-29/87-STN/Vol.I, dated 30.8.1989, certain instructions have been given that the break in service upto six months may be condoned by the Divisional Engineer concerned. The same has been clarified by the Proceedings, dated 10.4.1990. As per the said proceedings, if the period of break in service is more than one year, the cases should not be entertained and may be rejected summarily. These circular instructions would apply in respect of Casual Mazdoors. It is specifically stated in the counter that the conditions applicable to the Casual Mazdoors are equally applicable to the Temporary Status

Mazdoors also. It is also the case of the respondents that conferment of Temporary Status on the Casual Mazdoors is an intermediate stage in the process of regularization of services as regular Mazdoor and the same is not denied or disputed by filing a reply affidavit. Therefore, for the latches on the part of the writ petitioner, his services cannot be regularised. So also, the impugned proceedings, dated 4.2.2003 cannot be shown to be contrary to the circular instructions issued by the respondents from time to time.

For the foregoing reasons, I do find any merit in this writ petition and it is accordingly dismissed. However, it is made clear that this order will not preclude the respondents from reengaging the petitioner as a Casual Mazdoor depending upon the vacancies if he is found to be otherwise eligible. No costs.

_____

(K.C. BHANU, J.)

17th December, 2004.

bcj

To

1 Divisional Engineer (Administration), O/o. General Manager, B.S.N.L., Warangal.
2 General Manager, Telecom District,

B.S.N.L., Warangal.

3 Chief General Manager, B.S.N.L. Sanchar Bhavan, Hyderabad.

4 Two C.D. copies